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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DANIEL CARROLL,

Case No.: 3:17-cv-00587

Plaintiff,

**NOTICE OF REMOVAL OF
CIVIL ACTION**

v.

UNITED STATES OF AMERICA,

Defendants.

The United States of America provides notice that the state civil action, *Daniel Carroll v. Native American Rehabilitation Association*, No. 17CV03446, commenced in the Circuit Court of Multnomah County, Oregon, is hereby removed to this Court pursuant to 28 U.S.C. § 2679(d)(2), and 42

U.S.C. § 233(c). Consequently, “the United States shall be substituted as the party defendant.” 28 U.S.C. § 2679(d)(2). The United States provides the following grounds for removal.

1. On January 27, 2017, the following civil action alleging failure of medical treatment was filed in Multnomah County, Oregon: *Daniel Carroll v. Native American Rehabilitation Association*, No. 17CV03446. Plaintiff Carroll, acting pro se, alleged that on November 30, 2014, Defendant Native American Rehabilitation Association (“NARA”), located in Multnomah County, Oregon, refused to medically treat him without giving any reason. NARA is named as the defendant in the complaint.

2. Pursuant to 42 U.S.C. § 233(a), (g), the Secretary of the United States Department of Health and Human Services deemed NARA, at all relevant times, to be an employee of the Public Health Service and therefore eligible for coverage under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-80. *See* Exhibit 1 (deeming letter). Pursuant to § 233(c), and 28 C.F.R. § 15.4, the United States Attorney’s Office has certified that NARA was acting within the scope of its employment at the time of the incident out of which the suit arose. *See* Exhibit 2 (USAO certification).

3. The remedy for any tort action against NARA is exclusively under the FTCA. *See* 28 U.S.C. § 2679; 42 U.S.C. § 233(a). Based on the

certification of the United States Attorney's Office, this civil action brought in state court shall be removed to federal district court and "deemed a tort action brought against the United States" under the FTCA. 42 U.S.C. § 233(c); *see* 28 U.S.C. § 2679(d)(2). Accordingly, "the United States shall be substituted as the party defendant" in lieu of NARA. 28 U.S.C. § 2679(d)(2).

4. Tort actions governed by the FTCA may be removed to federal court at any time before trial. *See* 28 U.S.C. § 2679(d)(2). Consequently, the 30-day time limit set forth in 28 U.S.C. § 1446(b) does not apply here. *See Clark v. Wells Fargo Bank*, 585 F. App'x 817, 820 (3d Cir. 2014) (unpublished) (noting that "the United States Attorney's Office made the relevant certifications, triggering removal under § 2679" and that "[s]ection 1446 therefore does not apply"). In any event, this notice of removal is filed within 30 days after the United States Attorney's Office received a copy of the complaint on April 3, 2017. *See* 28 U.S.C. § 1446(b).

5. A copy of all process, pleadings, and orders in the state action are attached in Exhibit 3. *See* 28 U.S.C. § 1446(a).

6. A copy of this Notice of Removal shall be served upon Plaintiff Carroll and filed with the Court Clerk of Multnomah County, Oregon. *See* 28 U.S.C. § 1446(d).

7. This case, now pending in the Circuit Court for Multnomah County, Oregon, Case No. 17CV03446, is properly removed to this Court. *See* 28 U.S.C. § 2679(d)(2), and 42 U.S.C. § 233(c).

DATED April 13, 2017.

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney
District of Oregon

/s/ Renata A. Gowie
RENATA A. GOWIE
Assistant United States Attorney
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby CERTIFY that a copy of the Notice of Removal of Civil Action was sent by first-class pre-paid postage and deposited in the United States mail in Portland, Oregon, on April 13, 2017 and addressed as follows to the pro se plaintiff:

Daniel Carroll
388 SE 194th Ave, Apt. 239
Portland, Oregon 97233
Pro Se Plaintiff

/s/ Renata Gowie
RENATA GOWIE
Assistant United States Attorney